UNIVERSITY OF PENNSYLVANIA

LAW REVIEW

AND AMERICAN LAW REGISTER

FOUNDED 1852

Published October to June by the Law School of the University of Pennsylvania, 34th and Chestnut Streets, Philadelphia, Pa.

SUBSCRIPTION PRICE, $3.00 PER ANNUM, SINGLE COPIES, 35 CENTS

NOTES.

INDICTMENT AND INFORMATION—SUFFICIENCY AND CERTAINTY OF INFORMATION IN LANGUAGE OF STATUTE.—A statute of the state of Utah (Sess. Laws, 1911, c. 108) provides that "any person who shall by promises, threats, violence, or by any device or scheme, cause, induce, persuade, encourage, inveigle or entice an inmate of a house of prostitution or place of assignation to remain therein as such inmate" is guilty of the crime of pandering. An information based upon this statute charged that the defendant "did then and there wilfully, unlawfully and feloniously by promises and threats and by divers devices and schemes, cause, induce, persuade and encourage" a certain named female, "being then and there an inmate of a certain" designated "house of prostitution to remain therein as such inmate." The defendant, being convicted, appealed assigning for error the overruling of a demurrer to the information and a motion in arrest of judgment. The appellate court held that the information was insufficient and uncertain because it did not set forth the facts and circumstances constituting the promises

and threats, devices and schemes by which the female was induced to remain an inmate.[1] It is the purpose of this note to discuss the law underlying this decision.

There are numerous reasons for the rule requiring particularity in the charges of an indictment, and whether or not the indictment particularizes sufficiently to answer the purposes enumerated is the test of its sufficiency. Without setting forth the various reasons given by the text writers[2] and the cases[3] it is submitted that an indictment which gives such notice to the defendant that he is informed of the nature and cause of the accusation against him and may prepare his defense thereto both in respect to the law and the facts is sufficient to serve all the other purposes for which the charging part is designed. Thus an indictment fulfilling this requirement, surely identifies the charge to such an extent that the record of conviction or acquittal may be pleaded in a subsequent prosecution for the same offense, and to give the judge such information that he may apply the law correctly. Therefore, the test of the sufficiency of the charging part of an indictment is whether it gives the defendant such notice that he may prepare his defense.

This test applies alike to common law and to statutory offenses. Standard forms of indictment for common law offenses have been formulated which comply with the requirement above stated. Such forms developed contemporaneously with the offenses themselves, but when the legislature makes criminal an act heretofore not penal, the first indictment drawn under the act has no precedent. Many penal acts so specify the acts which are made criminal that an indictment following the words of the statute and setting out that the defendant did the prohibited acts at a certain time and place is sufficient to give the defendant the requisite notice.[4] Other criminal statutes use words of a general and comprehensive meaning or words with a peculiar legal significance, in which case an indictment following the exact words of the statute fails in the above requirement.[5]

A statute may penalize the doing of any one of a number of acts of a similar nature looking toward the same illegal end. There is but little difference of opinion in one particular in regard to the sufficiency and certainty of indictments under such acts. The cases hold that it is proper to charge the doing of any number of the prohibited acts in a single count, since the doing of any one, any number or all of the prohibited acts constitutes but a single offense.

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[1] State v. Topham, 123 Pac. Rep. 888 (Utah, 1912).

[2] Joyce on Indictments, Sec. 242.

[3] Wingard v. State, 13 Ga. 396 (1853).

[4] Holman v. State, 90 S. W. Rep. 174 (Tex. 1905); State v. Holedger, 15 Wash. 443 (1896); State v. Beebe, 53 So. Rep. 730 (La. 1910), but see People v. Perales, 141 Cal. 581 (1904).

[5] United States v. Cruickshank, 92 W. S. 542 (1875); Young v. State, 60 S. W. Rep. 767 (Tex. 1901); Bickel v. State, 32 Ind. App. 656 (1903).

The pleader must be careful, however, to charge the acts conjunctively. Thus it is proper to charge that the defendant did sell, barter, give away, *and* otherwise furnish intoxicating liquors;[6] whereas it would be held to be duplicitous, uncertain and vague to charge that the defendant did sell, barter, give away *or* otherwise furnish intoxicating liquors.[7] Now under the first charge, the defendant could be convicted upon proof that he did any one of the acts charged,[8] nor would he know until the trial which one the state would attempt to prove against him. It is therefore difficult to see that the indictment which charged the acts disjunctively gives the defendant any less notice than the one which charged him conjunctively, but such is the law. If it is not permissible to state such charges disjunctively, the mistake should be taken to be one merely of form to be cured by amendment at any time. The principal case states the charges conjunctively and so is not to be attacked on those grounds.

If the decision in the principal case is proper it is to be sustained on the grounds that the statute uses words and phrases of a general and comprehensive meaning and of a peculiar legal significance. A brief analysis of the cases would seem to support the decision, although the case is on the border line. In United States vs. Hess[9] the devising of any "artifice or scheme to defraud" through the use of the mails was prohibited by statute, and it was held that the device or scheme should be set out in detail in the indictment. It would follow that the scheme to induce this inmate to remain should have been set out. There was, however, another element in United States vs. Hess, namely, that it was a scheme "to defraud," and it is a general rule that where fraud is an essential element in the offense, the facts and circumstances constituting the fraud must be set out,[10] the reason being that fraud in law has a precise significance somewhat different from fraud in common understanding. There is no allegation of fraud in the information under discussion, nor in the statute under which the information was drawn, but we do find the words "threats" and "promises." Now in legal contemplation, these words "promises" and "threats" have a slightly different meaning from their ordinary significance. To come within the reach of the law promises and threats must be such as would be reasonably calculated to effectuate the desired purpose. In ordinary language, a promise is a promise, and a threat a threat whether an ordinary person would act thereon or not. In the last analysis

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[6] Hayes v. State, 111 Pac. Rep. 1020 (Okla. 1910); Regardanz v. State, 86 N. E. Rep. 449 (Ind. 1908); State v. Schleuter, 110 Mo. App. 7 (1904).

[7] Thompson v. State, 37 Ark. 408 (1881); but see U. S. v. D. L. & W. R. R. 152 Fed. 269 (1907).

[8] State v. Holedger, 15 Wash. 443 (1896).

[9] 124 U. S. 483 (1888).

[10] State v. Farmer, 104 N. C. 887 (1889); People v. Klippel, 160 N. Y. 371 (1899).

the correctness of the decision depends on whether the legislature intended to restrict these words to their legal significance, or to apply them in their ordinary meaning. Since the statute in question is a highly penal statute under which the judge might sentence to twenty years imprisonment, it would seem that the words should be restricted to their legal significance, and the case is therefore correct. *L. P. S.*

JUDGMENTS BY CONFESSION—WHEN A POWER OF ATTORNEY TO CONFESS JUDGMENT IS *Functus Officio.*—In Borough of Bellevue vs. Hallett,[1] the grantee of a power of attorney to confess judgment proceeded to have judgment entered. He filed a statement of claim but neglected to file a formal confession of judgment. For this reason the judgment was subsequently stricken off upon motion. A second judgment was then filed, regular in every particular. But upon a motion to strike off, this judgment was also nullified on the ground that the entry of the first judgment, despite its irregularity, was an exhaustion of the power of attorney: " . . this court, after argument and due consideration, made absolute the rule to strike off the first judgment. . . . True, this was done because of irregularities appearing on the face of the record; but the power authorized by the warrant had nevertheless been exhausted. We cannot breathe into it the breath of life, in view of the unbroken line of decisions sustaining this construction . . . " On appeal the Supreme Court of Pennsylvania in a short *per curiam* opinion, affirmed the rules of the trial court.

The courts are unanimously of opinion that after a valid judgment has been confessed under a power of attorney, the power is *functus officio.* Accordingly where judgment has been entered in one state under a power of attorney, it cannot subsequently be entered in another state on the same warrant.[2] Even "if the warrant had been to confess a judgment or judgments, in the plural, it seems that a second judgment could not be entered until the first judgment had been reversed or set aside." And in a number of Pennsylvania cases it has been determined that after a warrant has been exercised by a confession of judgment in one county, a subsequent judgment cannot be entered under the same power in another county.[3] Similarly it was held in Campbell vs. Canon [4] that where a year and a day was allowed to elapse without execution upon a judgment by confession, a second judgment could not be entered

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[1] 83 Atl. Rep. (Penna. 1912).

[2] Manufacturers and Mechanics' Bank v. Cowden *et al.*, 3 Hill (N. Y.) 461 (1842).

[3] Livezly v. Pennock, 2 Browne 321 (1813); Ely v. Karmany, 23 Pa. 314 (1854); Ulrich v. Voneida, 1 P. and W. 245 (1830); Martin v. Rex, 6 Sergeant and Rawle 296 (1820); Neff v. Barr, 14 S. and R. 166 (1826).

[4] Addison (Pa.) 267 (1795).